

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL I. SLOAN,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of  
Social Security Administration,

Defendant.

CASE NO. 11cv01439-WQH-JMA

ORDER

HAYES, Judge:

The matter before the Court is the Report and Recommendation (ECF No. 13), issued by United States Magistrate Judge Jan M. Adler, which recommends that the Motion for Summary Judgment filed by Plaintiff (ECF No. 9) be granted and the Cross-Motion for Summary Judgment filed by Defendant (ECF No. 11) be denied.

**BACKGROUND**

On March 29, 2007, Plaintiff filed an application for disability insurance benefits. (Administrative Record (“AR”) 116-130; ECF No. 6-5 at 3-17). Plaintiff’s claim was denied at the initial level and upon reconsideration. (AR 47-50, 55-59; ECF No. 6-4 at 2-5, 10-14). On February 4, 2010, a hearing was held before an administrative law judge (“ALJ”). (AR 24-44; ECF No. 6-2 at 25-45). On April 20, 2010, the ALJ issued a written decision finding that Plaintiff was not disabled, as defined in the Social Security Act, on December 31, 2004, the last date Plaintiff was insured. (AR 10-20; ECF No. 6-2 at 11-21). On May 10, 2010, the Appeals Council denied Plaintiff’s request for review and the ALJ’s decision became the final

1 decision of the Commissioner of Social Security. (AR 1-6; ECF No. 6-2 at 2-6).

2 On June 29, 2011, Plaintiff initiated this action against Defendant Michael J. Astrue,  
3 Commissioner of the Social Security Administration, pursuant to 42 U.S.C. § 405(g). (ECF  
4 No. 1). On January 9, 2012, Defendant filed an Answer. (ECF No. 5). On March 19, 2012,  
5 Plaintiff filed the Motion for Summary Judgment, asking the Court to reverse the  
6 Commissioner's final decision and to remand the case for an award of benefits or further  
7 proceedings. (ECF No. 9-1 at 10). On April 20, 2012, Defendant filed the Cross-Motion for  
8 Summary Judgment. (ECF No. 11).

9 On August 20, 2012, the Magistrate Judge issued the Report and Recommendation  
10 recommending that this Court grant Plaintiff's Motion for Summary Judgment, deny  
11 Defendant's Cross-Motion for Summary Judgment, and remand the case for further  
12 consideration by the ALJ. (ECF No. 13). The Magistrate Judge determined that "the record  
13 does not support the ALJ's implicit rejection of, or failure to adequately discuss, the opinion  
14 of [Plaintiff's treating physician,] Dr. Matloff." *Id.* at 16. The Magistrate Judge determined  
15 that none of the four reasons "proffered by the ALJ to discredit Plaintiff's subjective symptom  
16 testimony ... constitute[d] clear and convincing reason[s] supported by substantial evidence."  
17 *Id.* at 17-20. The Report and Recommendation concludes:

18 Any party may file written objections with the Court and serve a copy on  
19 all parties on or before **September 19, 2012**. The document should be captioned  
20 "Objections to Report and Recommendation." Any reply to the Objections shall  
21 be served and filed on or before **October 3, 2012**. The parties are advised that  
22 failure to file objections within the specified time may waive the right to appeal  
23 the district court's order.

24 *Id.* at 20 (citing *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991)).

25 The docket reflects that no objections to the Report and Recommendation have been  
26 filed.

### 27 **REVIEW OF THE REPORT AND RECOMMENDATION**

28 The duties of the district court in connection with a report and recommendation of a  
magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b).  
The district judge must "make a de novo determination of those portions of the report ... to  
which objection is made," and "may accept, reject, or modify, in whole or in part, the findings

1 or recommendations made by the magistrate.” 28 U.S.C. § 636(b). The district court need not  
2 review de novo those portions of a Report and Recommendation to which neither party objects.  
3 *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d  
4 1114, 1121-22 (9th Cir. 2003) (en banc).

5 The Court has reviewed the Report and Recommendation, the administrative record,  
6 and the submissions of the parties. The Court finds that the Magistrate Judge correctly  
7 recommended that “Plaintiff’s motion for summary judgment should be GRANTED,  
8 Defendant’s cross-motion for summary judgment should be DENIED, and the case should be  
9 remanded for further proceedings.” (ECF No. 13 at 20).

### 10 CONCLUSION

11 IT IS HEREBY ORDERED that: (1) the Report and Recommendation (ECF No. 13)  
12 is ADOPTED in its entirety; (2) Plaintiff’s Motion for Summary Judgment (ECF No. 9) is  
13 GRANTED; and (3) Defendant’s Cross-Motion for Summary Judgment (ECF No. 11) is  
14 DENIED. The Court REMANDS this case to the Social Security Administration for further  
15 administrative proceedings consistent with the Report and Recommendation.

16 DATED: November 7, 2012

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18 **WILLIAM Q. HAYES**  
19 United States District Judge  
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